



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, LOCAL 1801

Complainant

v.

GARY WULF, CHIEF NEGOTIATOR, TOWN OF
DERRY

Respondent

CASE NO. A-0502

DECISION NO. 84-57

APPEARANCES

Representing American Federation of State, County & Municipal Employees, Local 1801

James C. Anderson, Executive Director

Representing Gary Wulf, Chief Negotiator, Town of Derry

Gary Wulf, Chief Negotiator

Also present

Rodney Bartlett
Bernard Duval

Charles Buzzell
Candy Frank

BACKGROUND

On March 13, 1984, AFSCME, Local 1801, Derry Public Works (Union) filed improper practice charges against Gary Wulf, Chief Negotiator, Town of Derry (Town) citing the town's refusal to enter into factfinding and constituting unfair labor practice under RSA 273-A:5 I (a) (e) and (g).

The town denied the charges stating that 273-A:12 requires mediation prior to factfinding unless the "parties so choose" to bypass the process.

Hearing was held at PELRB offices in Concord on April 26, 1984 with all parties represented.

FINDINGS OF FACT AND RULINGS OF LAW

At hearing the sequence of events, as submitted by the union, was substantially agreed to:

On 10/26/83 the first negotiating session was held. Union proposals were presented and a date was set for the second meeting. The union stipulated that it intended to follow timetables required under RSA 273-A:12.

On 11/16/83 a second session was held. The town presented its first counterproposal and the union counterproposed.

On 11/30/83 a third meeting was held. The union received second town counterproposal and the union again counterproposed. Union reminded all of RSA 273-A:12. Both sides agreed that mediation was needed; union agreed to file with PELRB and requested that negotiations continue pending assignment. Town refused.

On 12/7/83 the union filed a request for a mediator with PELRB. No mediator was appointed immediately and union repeated its request.

On 1/23/84 the union amended its request, asking for a factfinder.

On 2/14/84 PELRB appointed a factfinder.

On 2/17/84 the chief negotiator, Gary Wulf, objected to the appointment of a factfinder without mediation citing RSA 273-A:12 and PELRB rule 7.3 arguing that the town is entitled to mediation and wanted it.

On 3/5/84 the factfinder appointed by PELRB met with the parties for mediation, having convinced them that he would meet for factfinding the next day. The union, at the March 5th meeting, asked the town to waive the 10-day privacy rule for release of the factfinder's report in order to present it to town meeting, March 17, 1984. The town declined and the union filed a complaint with PELRB.

The question of law which faces the Board is whether under RSA 273-A:12 the process of "mediation" must precede the process of "factfinding" or whether the law provides for by-passing ("skipping") mediation and going directly to fact-finding.

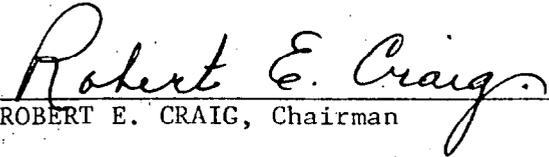
RSA 273-A:12 reads, in pertinent part,

"whenever the parties ... have bargained to impasse, or if the parties have not reached agreement on a contract within sixty days ... prior to the budget submission date, a neutral party chosen by the parties, or ... appointed by the Board, shall undertake to mediate (emphasis added) the issues remaining in dispute. If the parties so choose or if mediation does not result in agreement within forty-five days ... prior to budget submission date, a neutral party ... shall make and report findings of fact ..."

We believe the statute is clear on its face: normally mediation is contemplated prior to factfinding but the law allows mediation to be "skipped" "if the parties so choose....". In this case the parties did not agree to "so choose" and, therefore, mediation must precede factfinding and the town was within its rights to demand such, as well as to refuse to waive the 10-day privacy rule for factfinding reports, despite the impending town meeting.

DECISION

The PELRB declines to find the Town of Derry as having committed an unfair labor practice.


ROBERT E. CRAIG, Chairman

Signed this 13th day of July, 1984.

By unanimous vote. Chairman Craig presiding. Members Seymour Osman and Russell Verney present and voting. Also present, Evelyn C. LeBrun, Executive Director.